IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL JURISDICTION ORIGINAL SIDE

CHARTERED ACCOUNTANT REFERENCE NO. 1 OF 2000

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi .. Petitioner

vs.

Shri Ramesh R.Kapadia, F.C.A.,
Chartered Accountant,
Arihant Market, 2nd floor,
Machall Khadak,
P.O. Box 39, Aurangabad .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner.

None for the Respondent.

Mr. U. T. Yadav with Mr. S. S. Pakale for Union of India.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

This is a reference under Section 21(5) of the Chartered Accountants Act, 1949 (for short, `Act of 1949').

2. Shri Ramesh R. Kapadia, Chartered Accountant (for short, `the respondent') is the member of the Institute of Chartered Accountants of India. The Joint Director of Industries, Aurangabad (for short, `the complainant') filed a complaint against the respondent alleging the professional misconduct committed by him in issuing the certificates for consumption of raw material and production for the years 1986 and 1987 in respect of four units at Latur. The complainant alleged that there was no co-relation between the cost of raw material and value of finished products. The respondent, in the certificates issued by him showed the value of the goods as CIF value. The respondent also did not take into consideration the cost of raw material including customs duty paid by the units while reporting figures of production. It was, thus, alleged that the certificates were issued by the respondent without any record. Upon receipt of the complaint, the Institute sent a copy thereof to the respondent. In response thereto the respondent submitted his written statement. The complainant filed his rejoinder. The prima facie case of professional misconduct was found by the Council and, accordingly, the matter was referred to the disciplinary committee. Before the disciplinary committee the complainant as well as the respondent tendered the documents. The complainant as well as the respondent were examined by the disciplinary committee. After hearing the

parties, the disciplinary committee was of the opinion that the respondent was guilty of professional misconduct under clauses (7) and (8) of Part I of the Second Schedule of the Act of 1949 read with Sections 21 and 22 of that Act. The report was forwarded by the disciplinary committee to the Council. The Council called upon the complainant and the respondent to send their written representations and also permitted him to appear before the Council either in person or through a member of the Institute. The Council concurred with the opinion of the disciplinary committee and recommended to this Court that the respondent be reprimanded.

3. We heard Dr.Virendra Tulzapurkar, the learned senior counsel for the Institute of Chartered Accountants of India. The respondent has not chosen to appear despite service.

4. There appears to be no dispute that the respondent issued the certificates for consumption of raw material and production for the year 1986-87 in respect of four units of Latur district. It also appears from the available material that there was some discrepancy in the cost of raw material and the value of the finished products in the certificates issued by the respondent. Before the disciplinary committee he did not bring the

working papers to satisfy the committee that he had examined the relevant record before the issuance of the said certificates. In a way he admitted before the disciplinary committee that he did not verify the record, but the documents were verified by his office people. The fact that all the certificates were issued on one day was not in dispute. He failed to satisfy that reasonable care and caution was taken by him in verifying and checking the relevant record before the issuance of the said certificates. He admitted before the disciplinary committee that there was mistake, but his explanation was that the mistake was genuine.

5. Having considered the entire material available before us, we find that the certificates, four in number for consumption of raw material and production for the years 1986-87 in respect of the four units of Latur Region were issued by the respondent without proper care and caution and, thus, there was some professional negligence on the part of the respondent.

6. We, accordingly, uphold the finding of the disciplinary committee and accepted by the Council that the respondent was guilty of professional misconduct within the meaning of clauses (7) and (8) of Part I of Second Schedule read with Sections 21 and 22 of the Act of 1949.

7. The Council has recommended to this Court that the respondent be reprimanded. We accept the recommendation, particularly in view of the fact that the respondent had been candid in admitting the mistake.

8. We dispose of the reference accordingly.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)